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BUENOS AIRES 07186

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VATICAN OFFICE

E.O. 12356: DECL: OADR
TAGS: SHUM, PINS, PTER, AR
SUBJ: JUDICIAL DEFIANCE OF THE AMNESTY LAW IN ARGENTINA

1. (U) AN APPELLATE COURT IN THE FEDERAL DISTRICT ON
OCTOBER 10 HANDED THE MILITARY GOVERNMENT ITS LATEST
REVERSE IN THE EXECUTIVE-JUDICIARY DISPUTE OVER APPLICA-
TION OF THE AMNESTY LAW THAT WAS PROMULGATED ON SEPTEMBER
23. ONE OF THE MAIN PROVISIONS OF THAT LAW DESIGNATES
THE FEDERAL APPEALS COURTS AS THE VENUE FOR ADJUDICATION
OF PETITIONS FOR AMNESTY FOR OFFENSES COMMITTED BY EITHER
SIDE IN THE WAR AGAINST TERRORISM. THE FIRST SIGNS OF
JUDICIAL DEFIANCE OF THE MILITARY AUTHORITIES CAME TWO
WEEKS AGO WHEN MANY LOWER COURT JUDGES REFUSED TO TURN
OVER TO THE APPROPRIATE APPEALS COURTS CASES PENDING IN
THEIR JURISDICTIONS WITHIN THE 48 HOURS STIPULATED IN THE
NEW LAW. THERE ALSO HAS BEEN AT LEAST ONE INSTANCE WHERE
A FEDERAL PROSECUTOR, NORMALLY AN AGENT OF THE MINISTRY
OF JUSTICE, HAS CALLED ON THE APPEALS COURTS NOT TO
ACCEPT CASES SUSCEPTIBLE TO THE AMNESTY WHICH ARE
REMANDED FROM LOWER COURTS.

ARGENTINA PROJECT (S200000044)

U.S. DEPT. OF STATE, A/RPS/PS

Margaret P. Grafeld, Director

(☒) Release () Excise () Deny

Exemption(s):

Declassify: () In Part (☒) In Full

() Classify as () Extend as () Downgrade to

Date Declassify on Reason

INITIALS:
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2. (U) ON OCTOBER 10, A THREE-JUDGE APPEALS COURT IN BUENOS AIRES ORDERED THE RELEASE OF FOUR INDIVIDUALS VARIOUSLY SENTENCED PREVIOUSLY TO BETWEEN FIVE AND TWENTY-FIVE YEARS IMPRISONMENT FOR SUBVERSIVE OR TERRORIST ACTS. THE FOUR HAD BEEN TRIED AND CONVICTED BY LOWER FEDERAL COURT JUDGES FOR VIOLATIONS OF THE NATIONAL SECURITY LAWS. PERSONS IN THIS CATEGORY ARE EXCLUDED FROM THE BENEFITS OF THE AMNESTY, ACCORDING TO ARTICLE THREE OF THE NEW LAW. RELIEF IS AVAILABLE TO THEM ONLY THROUGH EXECUTIVE PARDON.

3. (U) SPEAKING FOR THE COURT, JUDGE RAUL RODRIGUEZ ARAYA SAID IT WAS ORDERING THE RELEASE OF THE FOUR CONVICTS AFTER BROADENING THE REACH OF THE AMNESTY TO COVER PERSONS ALREADY CONVICTED BY A COURT FOR SUBVERSIVE CRIMES. NOT TO DO SO, HE SAID, WOULD PUT THE COURTS IN THE POSITION OF APPLYING THE LAW IN A DISCRIMINATORY FASHION.

CLASSIFICATION

4. [REDACTED] COMMENT: THE REVOLT OF SOME JUDGES AGAINST CARRYING OUT THE STIPULATED PROVISIONS OF THE AMNESTY HAS BEEN UNSETTLING ENOUGH TO THE MILITARY. TO HAVE THE COURTS APPLYING THE LAW IN A WAY EXPLICITLY DENIED WILL INCREASE APPREHENSIONS IN THE ARMED FORCES. WE UNDERSTAND THAT THE TREATMENT OF PRISONERS WAS ONE OF THE MOST CONTROVERSIAL ISSUES WITHIN THE MILITARY ESTABLISHMENT DURING THE DRAFTING OF THE AMNESTY LAW. THE INTERNAL DEBATE WAS RESOLVED IN FAVOR OF EXCLUDING THOSE ALREADY CONVICTED, BUT THIS COURT SEEMS TO BE OVERTURNING THIS COMPROMISE. WHETHER THE EXECUTIVE BRANCH WILL OBEY THE COURT DECISION TO RELEASE THE FOUR CONVICTED TERRORISTS REMAINS TO BE SEEN. HOWEVER, PRESIDENT BIGNONE'S STATEMENT IN HIS OCTOBER 4 NATIONALLY-TELEVISED SPEECH THAT HIS GOVERNMENT OBEYS THE COURTS IS BOUND TO BE RECALLED BY MANY PEOPLE. BUSHNELL**

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